



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.04.1996
COM(96) 145 final

96/0103 (ACC)

Proposal for a

COUNCIL REGULATION (EC)

**amending Regulation (EC) No 384/96 on protection against dumped imports from
countries not members of the European Community**

(presented by the Commission)

Explanatory Memorandum

On 28 April 1995, a GATT panel released a report of its examination of a dispute between the Community and Japan concerning anti-dumping duties imposed by the Community against imports of audio cassettes from Japan.

The panel found in favour of the Community on several points but on one issue it considered that Community legislation was not wholly in line with its international obligations.

This issue concerned the comparison between the prices on the domestic market of the exporting country ("normal value") and the prices from that country to the Community ("export price") which is the basis for establishing dumping margins. More specifically, the point at issue was which adjustments should be made to either price for differences in the selling expenses incurred in making such sales in order to make them comparable. In this respect, the panel considered that Community legislation was too restrictive in confining allowances to a specific and exhaustive list.

On the grounds that it is conceivable that differences, other than those listed in Community legislation, may (depending on the precise terms of sale agreed between buyer and seller at the time of sale) affect price levels and hence price comparability, it is considered important, in order to ensure legal certainty, to amend the Community's anti-dumping legislation so that allowances could be made for such other costs. Clearly, any such allowance should be dependent on the exporter demonstrating an effect on price comparability as required by Article 2.4 of the new WTO Anti-Dumping Agreement.

Moreover, it is also appropriate to clarify the requirements for an adjustment for differences in levels of trade when information on price effects for two levels of trade does not exist for the market concerned or when, despite prices being at the same level, an adjustment may be appropriate for expenses, such as advertising, which in certain circumstances may be more suitably allocated to other levels of trade;

The full contents of the panel report is still being examined by the relevant services of the Commission and an analysis of the report will be submitted to the Council in the near future. In the meantime, in order to avoid conflict with our trading partners, it is desirable to proceed with this amendment.

Therefore, the Commission submits to the Council:

- a proposal to amend paragraph 10 of Article 2 of Council Regulation (EC) No 384 of 22.12.95¹.

¹ OJ No L 56 of 6.3.96

Council Regulation (EC)
amending Regulation (EC) No 384/96 on protection against dumped imports
from countries not members of the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²

Whereas by Regulation (EC) No 384 of 22 December 1995³ the Council has adopted common rules for protection against dumped imports from countries which are not members of the European Community;

Whereas paragraph 10 of Article 2 of Regulation (EC) No 384/96 provides for a limited number of allowances which can be made to the normal value and export prices before these are compared to establish whether dumping is taking place; whereas since it is conceivable that differences in selling expenses, other than those listed in the said Regulation, may in certain circumstances affect price comparability, it is prudent to eliminate the exclusive nature of this provision in relation to allowances.

Whereas it is also appropriate to clarify the requirements for an adjustment for differences in levels of trade when information on price effects for two levels of trade does not exist for the market concerned or when, despite prices being at the same level, an adjustment may be appropriate for expenses, such as advertising, which in certain circumstances may be more suitably allocated to other levels of trade.

HAS ADOPTED THIS REGULATION:

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³ OJ No L 56 of 6.3.96

Article 1

Regulation (EC) No 384/96 shall be amended as follows:

1. Sub-paragraph (d) of Article 2.10 shall be replaced by the following:

(d) Level of trade

An adjustment for differences in levels of trade, including any differences which may arise in OEM (Original Equipment Manufacturer) sales, shall be granted where, in relation to the distribution chain in both markets, it is shown that the export price, including a constructed export price, is at a different level of trade to the normal value. An effect on price comparability must be demonstrated by evidence which confirms a clear distinction between the prices for the different levels of trade on the domestic market of the exporting country. However, where information relating to such price effects does not exist for that market, or where certain functions are shown to relate to levels of trade other than those which are to be compared, a special adjustment may be granted.

2. The following sub-paragraph (k) shall be added after Article 2.10 (j):

(k) Other factors

An adjustment may also be made for differences in other factors provided it is demonstrated that they affect price comparability as required under this paragraph, in particular that customers take account of such differences on their own market by agreeing to prices which are distinct from those agreed on the same market when there are no such differences."

Article 2

This Regulation shall apply to proceedings initiated after 1 January 1996.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

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